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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1H 2007 692

11 KIM LOUISE MOSCATIELLO
12 1240 Luther Way #18
Salinas CA 93901

A C C U S A T I O N

13
14 Respiratory Care Practitioner License no. 13312

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about February 8, 1990, the Respiratory Care Board issued
23 Respiratory Care Practitioner License Number 13312 to Kim Louise Moscatiello (Respondent).
24 The Respiratory Care Practitioner License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on October 31, 2009, unless renewed.

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12. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation. "

13. California Code of Regulations, title 16, section 1399.370, states:

"For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act."

FIRST CAUSE FOR DISCIPLINE

(Possession and use of a controlled substance)

14. Respondent is subject to disciplinary action under sections 3750(g), 3750.5(a) [possession of a controlled substance], and 3750.5(b) [use of a controlled substance.] The circumstances are as follows:

15. On or about December 10, 2007, respondent worked from 6:45 p.m. until December 11, 2007 at 7:15 a.m. as a respiratory therapist at Natividad Medical Center (NMC).

16. E.I., a registered nurse at NMC, administered one milligram (mg.) of morphine¹ syrup to a patient in a dose cup that contained ten mg. of the syrup. E.I. did not immediately dispose of the morphine syrup, and instead placed the dose cup in a locked medication room. E.I. became busy with patient care, and after about thirty minutes, she returned to the medication room. The dose cup containing morphine was missing. During the thirty

1. Morphine is a dangerous drug as defined in section 4022, and a Schedule II controlled substance and narcotic as defined in Health & Safety code section 11055(b)(1).

1 minutes that E.I. was busy, respondent and respiratory therapist J.M. entered the locked
2 medication room to remove respiratory medications. Both respondent and J.M. were questioned
3 about the missing morphine, and both denied seeing it.

4 17. During the course of the work shift, J.M. observed that respondent had
5 slurred speech, was falling asleep and staggering. From 1:00 a.m. until 2:00 a.m., he observed
6 that respondent was unable to perform patient care, and J.M. did her respiratory treatments. At
7 5:30 a.m., J.M. found respondent in the Med Surg medications room “in a haze.” She was
8 unable to perform patient care, and he performed her respiratory treatments. J.M. reported his
9 observations to John Nevill, Director of Cardiopulmonary Services at NMC.

10 18. On December 11, 2007, based on E.I. and J.M.’s reports, Mr. Nevill
11 placed respondent on investigatory leave.

12 19.. On December 17, 2007, respondent spoke on the telephone with Mr.
13 Nevill and admitted that she drank the 9 mg. dose of morphine E.I. had left in the medications
14 room.

15 20. On December 19, 2007, respondent provided a two page handwritten
16 statement to Mr. Nevill in which she admitted that she “stole morphine syrup from the pediatric
17 unit and ingested (it) while on duty.”

18 21. Therefore, respondent’s license is subject to discipline in that she was in
19 possession of and ingested morphine, a controlled substance, while working as a respiratory
20 therapist, in violation of code sections 3750(g), 3750.5(a) and 3750.5(b).

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct)

23 22. Paragraphs 14 through 20 are incorporated herein.

24 23. Respondent’s act of stealing morphine syrup, a patient’s medication, while
25 she was on duty as a respiratory therapist, is unprofessional conduct, and has subjected her to
26 discipline for violating Business and Professions code section 3755.

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2 THIRD CAUSE FOR DISCIPLINE

3 (Dishonest Act)

4 24. Paragraphs 14 through 23 are incorporated herein.

5 25. Respondent's act of stealing morphine syrup, a patient's medication, while
6 she was on duty as a respiratory therapist, is a dishonest act and has subjected her to discipline
7 for violating Business and Professions code section 3750(j).

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

11 1. Revoking or suspending Respiratory Care Practitioner License Number
12 13312, issued to Kim Louise Moscatiello.

13 2. Ordering Kim Louise Moscatiello to pay the Respiratory Care Board the
14 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
15 probation monitoring;

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: February 8, 2008

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20 Original signed by: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant
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